

110TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend titles 17 and 18, United States Code, and the Trademark Act of 1946 to strengthen and harmonize the protection of intellectual property, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. LEAHY (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend titles 17 and 18, United States Code, and the Trademark Act of 1946 to strengthen and harmonize the protection of intellectual property, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Intellectual Property  
5 Enforcement Act of 2007”.

1 **SEC. 2. AUTHORIZATION OF CIVIL COPYRIGHT ENFORCE-**  
2 **MENT BY ATTORNEY GENERAL.**

3 (a) IN GENERAL.—Chapter 5 of title 17, United  
4 States Code, is amended by inserting after section 506 the  
5 following:

6 **“§ 506a. Civil penalties for violations of section 506**

7 “(a) IN GENERAL.—In lieu of a criminal action under  
8 section 506, the Attorney General may commence a civil  
9 action in the appropriate United States district court  
10 against any person who engages in conduct constituting  
11 an offense under section 506. Upon proof of such conduct  
12 by a preponderance of the evidence, such person shall be  
13 subject to a civil penalty under section 504 which shall  
14 be in an amount equal to the amount which would be  
15 awarded under section 3663(a)(1)(B) of title 18 and res-  
16 titution to the copyright owner aggrieved by the conduct.

17 “(b) OTHER REMEDIES.—

18 “(1) IN GENERAL.—Imposition of a civil pen-  
19 alty under this section does not preclude any other  
20 criminal or civil statutory, injunctive, common law,  
21 or administrative remedy, which is available by law  
22 to the United States or any other person.

23 “(2) OFFSET.—Any restitution received by a  
24 copyright owner as a result of a civil action brought  
25 under this section shall be offset against any award  
26 of damages in a subsequent copyright infringement

1 civil action by that copyright owner for the conduct  
2 that gave rise to the civil action brought under this  
3 section.”.

4 (b) DAMAGES AND PROFITS.—Section 504 of title 17,  
5 United States Code, is amended—

6 (1) in subsection (b)—

7 (A) in the first sentence—

8 (i) by inserting “, or the Attorney  
9 General in a civil action,” after “The copy-  
10 right owner”; and

11 (ii) by striking “him or her” and in-  
12 serting “the copyright owner”; and

13 (B) in the second sentence by inserting “,  
14 or the Attorney General in a civil action,” after  
15 “the copyright owner”; and

16 (2) in subsection (c)—

17 (A) in paragraph (1), by inserting “, or the  
18 Attorney General in a civil action,” after “the  
19 copyright owner”; and

20 (B) in paragraph (2), by inserting “, or  
21 the Attotrney General in a civil action,” after  
22 “the copyright owner”.

23 (c) TECHNICAL AND CONFORMING AMENDMENT.—

24 The table of sections for chapter 5 of title 17, United

1 States Code, is amended by inserting after the item relat-  
2 ing to section 506 the following:

“506a. Civil penalties for violation of section 506.”.

3 **SEC. 3. IMPROVED INVESTIGATIVE AND FORENSIC RE-**  
4 **SOURCES FOR ENFORCEMENT OF LAWS RE-**  
5 **LATED TO INTELLECTUAL PROPERTY**  
6 **CRIMES.**

7 (a) IN GENERAL.—The Attorney General, in con-  
8 sultation with the Director of the Federal Bureau of In-  
9 vestigation, shall, with respect to crimes related to the  
10 theft of intellectual property—

11 (1) create an operational unit of the Federal  
12 Bureau of Investigation—

13 (A) to work with the Computer Crime and  
14 Intellectual Property section of the Department  
15 of Justice on the investigation and coordination  
16 of intellectual property crimes that are complex,  
17 committed in more than 1 judicial district, or  
18 international;

19 (B) that consists of at least 10 agents of  
20 the Bureau; and

21 (C) that is located at the headquarters of  
22 the Bureau;

23 (2) ensure that any unit in the Department of  
24 Justice responsible for investigating computer hack-  
25 ing or intellectual property crimes is assigned at

1 least 2 agents of the Federal Bureau of Investiga-  
2 tion (in addition to any agent assigned to such unit  
3 as of the date of the enactment of this Act) to sup-  
4 port such unit for the purpose of investigating or  
5 prosecuting intellectual property crimes; and

6 (3) implement a comprehensive program—

7 (A) the purpose of which is to train agents  
8 of the Federal Bureau of Investigation in the  
9 investigation and prosecution of such crimes  
10 and the enforcement of laws related to intellec-  
11 tual property crimes;

12 (B) that includes relevant forensic training  
13 related to investigating and prosecuting intellec-  
14 tual property crimes; and

15 (C) that requires such agents who inves-  
16 tigate or prosecute intellectual property crimes  
17 to attend the program annually.

18 (b) INTELLECTUAL PROPERTY LAW ENFORCEMENT  
19 COORDINATORS.—Not later than 120 days after the date  
20 of the enactment of this Act, the Attorney General shall  
21 assign 1 Federal prosecutor to the appropriate office of  
22 the Department of Justice located in Hong Kong and 1  
23 Federal prosecutor to such an office located in Budapest,  
24 Hungary, to assist in the coordination of the enforcement

1 of intellectual property laws between the United States  
2 and foreign nations.

3 (c) ORGANIZED CRIME TASK FORCE.—Not later  
4 than 120 days after the date of the enactment of this Act,  
5 the Attorney General, through the United States Attor-  
6 neys' Offices, the Computer Crime and Intellectual Prop-  
7 erty section, and the Organized Crime and Racketeering  
8 section of the Department of Justice, and in consultation  
9 with the Federal Bureau of Investigation and other Fed-  
10 eral law enforcement agencies, shall create a Task Force  
11 to develop and implement a comprehensive, long-range  
12 plan to investigate and prosecute international organized  
13 crime syndicates engaging in or supporting crimes relating  
14 to the theft of intellectual property.

15 (d) AUTHORIZATION.—There are authorized to be ap-  
16 propriated to carry out this section \$12,000,000 for each  
17 of fiscal years 2008 through 2011.

18 **SEC. 4. ADDITIONAL FUNDING FOR RESOURCES TO INVES-**  
19 **TIGATE AND PROSECUTE CRIMINAL ACTIV-**  
20 **ITY INVOLVING COMPUTERS.**

21 (a) ADDITIONAL FUNDING FOR RESOURCES.—

22 (1) AUTHORIZATION.—In addition to amounts  
23 otherwise authorized for resources to investigate and  
24 prosecute criminal activity involving computers,

1           there are authorized to be appropriated for each of  
2           the fiscal years 2008 through 2011—

3                   (A) \$10,000,000 to the Director of the  
4                   Federal Bureau of Investigation; and

5                   (B) \$10,000,000 to the Attorney General  
6                   for the Criminal Division of the Department of  
7                   Justice.

8           (2) AVAILABILITY.—Any amounts appropriated  
9           under paragraph (1) shall remain available until ex-  
10          pended.

11          (b) USE OF ADDITIONAL FUNDING.—Funds made  
12          available under subsection (a) shall be used by the Direc-  
13          tor of the Federal Bureau of Investigation and the Attor-  
14          ney General, for the Federal Bureau of Investigation and  
15          the Criminal Division of the Department of Justice, re-  
16          spectively, to—

17                  (1) hire and train law enforcement officers to—

18                          (A) investigate crimes committed through  
19                          the use of computers and other information  
20                          technology, including through the use of the  
21                          Internet; and

22                          (B) assist in the prosecution of such  
23                          crimes; and

24                  (2) procure advanced tools of forensic science to  
25          investigate, prosecute, and study such crimes.

1 **SEC. 5. REGISTRATION IN CIVIL INFRINGEMENT ACTIONS.**

2 (a) LIMITATION TO CIVIL ACTIONS; HARMLESS  
3 ERROR.—Section 411 of title 17, United States Code, is  
4 amended—

5 (1) in the section heading, by inserting “**civil**”  
6 before “**infringement**”;

7 (2) in subsection (a)—

8 (A) in the first sentence, by striking “no  
9 action” and inserting “no civil action”; and

10 (B) in the second sentence, by striking “an  
11 action” and inserting “a civil action”;

12 (3) in subsection (b)—

13 (A) by redesignating that subsection as  
14 subsection (c); and

15 (B) by striking “506 and sections 509  
16 and” and inserting “505 and section”;

17 (4) by inserting after subsection (a) the fol-  
18 lowing:

19 “(b)(1) A certificate of registration satisfies the re-  
20 quirements of this section and section 412, regardless of  
21 whether the certificate contains any inaccurate informa-  
22 tion, unless—

23 “(A) the inaccurate information was included  
24 on the application for copyright registration with  
25 knowledge that it was inaccurate; and



1           “(B) the inaccurate information, if known,  
2           would have caused the Register of Copyrights to  
3           refuse registration.

4           “(2) In any case in which inaccurate information de-  
5           scribed under paragraph (1) is alleged, the court shall re-  
6           quest the Register of Copyrights to advise the court  
7           whether the inaccurate information, if known, would have  
8           caused the Register of Copyrights to refuse registra-  
9           tion.”;”.

10          (b) **TECHNICAL AND CONFORMING AMENDMENTS.—**

11           (1) Section 412 of title 17, United States Code,  
12           is amended by striking “411(b)” and inserting  
13           “411(e)”.

14           (2) The item relating to section 411 in the table  
15           of sections for chapter 4 of title 17, United States  
16           Code, is amended to read as follows:

          “411. Registration and civil infringement actions.”.

17          **SEC. 6. CIVIL REMEDIES FOR INFRINGEMENT.**

18           (a) **IN GENERAL.—**Section 503(a) of title 17, United  
19           States Code, is amended—

20           (1) by striking “and of all plates” and inserting  
21           “, of all plates”; and

22           (2) by striking the period and inserting “, and  
23           of records documenting the manufacture, sale, or re-  
24           ceipt of things involved in such violation. The court  
25           shall enter an appropriate protective order with re-

1 spect to discovery of any records that have been  
2 seized. The protective order shall provide for appro-  
3 priate procedures to assure that confidential infor-  
4 mation contained in such records is not improperly  
5 disclosed to any party.”.

6 (b) PROTECTIVE ORDERS FOR SEIZED RECORDS.—  
7 Section 34(d)(1)(A) of the Act entitled “An Act to provide  
8 for the registration and protection of trademarks used in  
9 commerce, to carry out the provisions of certain inter-  
10 national conventions, and for other purposes.”, approved  
11 July 5, 1946 (commonly referred to as the Trademark Act  
12 of 1946) (15 U.S.C. 1116(d)(1)(A)) is amended by adding  
13 “The court shall enter an appropriate protective order  
14 with respect to discovery of any records that have been  
15 seized. The protective order shall provide for appropriate  
16 procedures to assure that confidential information con-  
17 tained in such records is not improperly disclosed to any  
18 party.” after the first sentence.

19 **SEC. 7. CRIMINAL INFRINGEMENT.**

20 (a) FORFEITURE AND DESTRUCTION; RESTITU-  
21 TION.—Section 506(b) of title 17, United States Code, is  
22 amended to read as follows:

23 “(b) FORFEITURE, DESTRUCTION, AND RESTITU-  
24 TION.—Forfeiture, destruction, and restitution relating to  
25 this section shall be subject to section 2323 of title 18,

1 to the extent provided in that section, in addition to any  
2 other similar remedies provided by law.”.

3 (b) SEIZURES AND FORFEITURES.—

4 (1) REPEAL.—Section 509 of title 17, United  
5 States Code, is repealed.

6 (2) TECHNICAL AND CONFORMING AMEND-  
7 MENT.—The table of sections for chapter 5 of title  
8 17, United States Code, is amended by striking the  
9 item relating to section 509.

10 **SEC. 8. IMPORTATION AND EXPORTATION.**

11 (a) IMPORTATION AND EXPORTATION OF INFRING-  
12 ING ITEMS.—Section 602(a) of title 17, United States  
13 Code, is amended—

14 (1) by redesignating paragraphs (1), (2), and  
15 (3) as subparagraphs (A), (B), and (C);

16 (2) in the first sentence, by striking “Importa-  
17 tion” and inserting “(1) Importation”;

18 (3) by striking “106, actionable” and inserting  
19 “106 and is actionable”;

20 (4) by striking “This subsection does not apply  
21 to—” and inserting the following:

22 “(2) Importation into the United States or expor-  
23 tation from the United States, without the authority of  
24 the owner of copyright under this title, of copies or  
25 phonorecords, the making of which either constituted an

1 infringement of copyright or would have constituted an in-  
2 fringement of copyright if this title had been applicable,  
3 is an infringement of the exclusive right to distribute cop-  
4 ies or phonorecords under section 106 and is actionable  
5 under sections 501 and 506.

6 “(3) This subsection does not apply to—”;

7 (5) in subparagraph (A), as redesignated, by in-  
8 serting “or exportation” after “importation”;

9 (6) in subparagraph (B), as redesignated—

10 (A) by striking “, for the private use of the  
11 importer” and inserting “or exportation, for the  
12 private use of the importer or exporter”; and

13 (B) by inserting “or departing from the  
14 United States” after “outside the United  
15 States”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

17 (1) The section heading for section 602 of title 17, United  
18 States Code, is amended by inserting “**or exportation**”  
19 after “**importation**”.

20 (2) The table of sections for chapter 6 of title 17,  
21 United States Code, is amended by inserting “or expor-  
22 tation” after “importation”.

23 (3) The heading for chapter 6 of title 17, United  
24 States Code, is amended to read as follows:

1 **“CHAPTER 6—MANUFACTURING REQUIRE-**  
2 **MENTS, IMPORTATION, AND EXPOR-**  
3 **TATION”.**

4 (4) The item relating to chapter 6 in the table of  
5 chapters for title 17, United States Code, is amended to  
6 read as follows:

**“6. Manufacturing Requirements, Importation, and Ex-**  
**portation ..... 601”.**

7 **SEC. 9. DEFINING TERMS RELATING TO CIRCUMVENTION**  
8 **OF COPYRIGHT PROTECTION SYSTEMS.**

9 Section 1201 of title 17, United States Code, is  
10 amended—

11 (1) in subsection (a)—

12 (A) in paragraph (2), by striking “im-  
13 port,”; and

14 (B) in paragraph (3)—

15 (i) in subparagraph (A), by striking  
16 “and” after the semicolon;

17 (ii) in subparagraph (B), by striking  
18 the period and inserting “; and”;

19 (iii) by redesignating subparagraph  
20 (B) as subparagraph (C), and inserting  
21 after subparagraph (A) the following:

22 “(B) the term ‘financial gain’ includes re-  
23 ceipt, or expectation of receipt, of anything of

1 value, including the receipt of other copyrighted  
2 works;” and

3 (iv) by adding at the end the fol-  
4 lowing:

5 “(C) the term ‘traffic in’ means to trans-  
6 port, transfer, or otherwise dispose of, to an-  
7 other, for purposes of commercial advantage or  
8 private financial gain, or to make, import, ex-  
9 port, obtain control of, or possess, with intent  
10 to so transport, transfer, or otherwise dispose  
11 of.”; and

12 (2) in subsection (b)—

13 (A) in paragraph (1), by striking “im-  
14 port,”; and

15 (B) in paragraph (2)—

16 (i) in subparagraph (A), by striking  
17 “and” after the semicolon;

18 (ii) in subparagraph (B), by striking  
19 the period and inserting “; and”;

20 (iii) by redesignating subparagraph  
21 (B) as subparagraph (C), and inserting  
22 after subparagraph (A) the following:

23 “(B) the term ‘financial gain’ includes re-  
24 ceipt, or expectation of receipt, of anything of

1 value, including the receipt of other copyrighted  
2 works;”); and

3 (iv) by adding at the end the fol-  
4 lowing:

5 “(D) the term ‘traffic in’ means to trans-  
6 port, transfer, or otherwise dispose of, to an-  
7 other, or to make, import, export, obtain control  
8 of, or possess, with intent to so transport,  
9 transfer, or otherwise dispose of.”.

10 **SEC. 10. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.**

11 Section 1834 of title 18, United States Code, is  
12 amended to read as follows:

13 **“§ 1834. Criminal forfeiture**

14 “Forfeiture, destruction, and restitution relating to  
15 this chapter shall be subject to section 2323, to the extent  
16 provided in that section, in addition to any other similar  
17 remedies provided by law.”.

18 **SEC. 11. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT**  
19 **LABELS, OR COUNTERFEIT DOCUMENTATION**  
20 **OR PACKAGING FOR WORKS THAT CAN BE**  
21 **COPYRIGHTED.**

22 Section 2318 of title 18, United States Code, is  
23 amended as follows:

24 (1) Subsection (a) is amended——

1 (A) by redesignating subparagraphs (A)  
2 through (G) as clauses (i) through (vii), respec-  
3 tively;

4 (B) by redesignating paragraphs (1) and  
5 (2) as subparagraphs (A) and (B), respectively;  
6 and

7 (C) by striking “Whoever” and inserting  
8 “(1) Whoever”.

9 (2) Section 2318(d) is amended to read as fol-  
10 lows:

11 “(d) FORFEITURE AND DESTRUCTION OF PROPERTY;  
12 RESTITUTION.—Forfeiture, destruction, and restitution  
13 relating to this section shall be subject to section 2323,  
14 to the extent provided in that section, in addition to any  
15 other similar remedies provided by law.”.

16 (3) Section 2318 is further amended by striking  
17 subsection (e) and redesignating subsection (f) as  
18 subsection (e).

19 **SEC. 12. UNAUTHORIZED RECORDING OF MOTION PIC-**  
20 **TURES.**

21 Section 2319B(b) of title 18, United States Code, is  
22 amended to read as follows:

23 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;  
24 RESTITUTION.—Forfeiture, destruction, and restitution  
25 relating to this section shall be subject to section 2323,



1 to the extent provided in that section, in addition to any  
2 other similar remedies provided by law.”.

3 **SEC. 13. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**  
4 **ICES.**

5 Section 2320(b) of title 18, United States Code, is  
6 amended to read as follows:

7 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;  
8 RESTITUTION.—Forfeiture, destruction, and restitution  
9 relating to this section shall be subject to section 2323,  
10 to the extent provided in that section, in addition to any  
11 other similar remedies provided by law.”.

12 **SEC. 14. FORFEITURE, DESTRUCTION, AND RESTITUTION.**

13 (a) IN GENERAL.—Chapter 113 of title 18, United  
14 States Code, is amended by adding at the end the fol-  
15 lowing:

16 **“§ 2323. Forfeiture, destruction, and restitution**

17 “(a) CIVIL FORFEITURE.—

18 “(1) PROPERTY SUBJECT TO FORFEITURE.—

19 The following property is subject to forfeiture to the  
20 United States:

21 “(A) Any article the making or trafficking  
22 of which is prohibited under section 506 or  
23 1204 of title 17, or section 2318, 2319, 2319A,  
24 2319B, or 2320, or chapter 90, of this title.

1           “(B) Any property used, or intended to be  
2           used, in any manner or part to commit or facili-  
3           tate the commission of an offense referred to in  
4           subparagraph (A).

5           “(C) Any property constituting or derived  
6           from any proceeds obtained directly or indi-  
7           rectly as a result of the commission of an of-  
8           fense referred to in subparagraph (A).

9           “(2) PROCEDURES.—The provisions of chapter  
10          46 relating to civil forfeitures shall extend to any  
11          seizure or civil forfeiture under this section. At the  
12          conclusion of the forfeiture proceedings, unless oth-  
13          erwise requested by an agency of the United States,  
14          the court shall order that any property forfeited  
15          under paragraph (1) be destroyed, or otherwise dis-  
16          posed of according to law.

17          “(b) CRIMINAL FORFEITURE.—

18                 “(1) PROPERTY SUBJECT TO FORFEITURE.—  
19          The court, in imposing sentence on a person con-  
20          victed of an offense under section 506 or 1204 of  
21          title 17, or section 2318, 2319, 2319A, 2319B, or  
22          2320, or chapter 90, of this title, shall order, in ad-  
23          dition to any other sentence imposed, that the per-  
24          son forfeit to the United States any property subject  
25          to forfeiture under subsection (a) for that offense.

1 “(2) PROCEDURES.—

2 “(A) IN GENERAL.—The forfeiture of  
3 property under paragraph (1), including any  
4 seizure and disposition of the property and any  
5 related judicial or administrative proceeding,  
6 shall be governed by the procedures set forth in  
7 section 413 of the Comprehensive Drug Abuse  
8 Prevention and Control Act of 1970 (21 U.S.C.  
9 853), other than subsection (d) of that section.

10 “(B) DESTRUCTION.—At the conclusion of  
11 the forfeiture proceedings, the court, unless oth-  
12 erwise requested by an agency of the United  
13 States—

14 “(i) shall order that any forfeited arti-  
15 cle or component of an article bearing or  
16 consisting of a counterfeit mark be de-  
17 stroyed or otherwise disposed of according  
18 to law; and

19 “(ii) shall order that any infringing  
20 items or other property described in sub-  
21 section (a)(1)(A) and forfeited under para-  
22 graph (1) of this subsection be destroyed  
23 or otherwise disposed of according to law.

24 “(c) RESTITUTION.—When a person is convicted of  
25 an offense under section 506 or 1204 of title 17 or section

1 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of  
2 this title, the court, pursuant to sections 3556, 3663A,  
3 and 3664 of this title, shall order the person to pay res-  
4 titution to any victim of the offense as an offense against  
5 property referred to in section 3663A(c)(1)(A)(ii) of this  
6 title.”.

7 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—  
8 The table of sections for chapter 113 of title 18, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing:

“2323. Forfeiture, destruction, and restitution.”.

11 **SEC. 15. TECHNICAL AND CONFORMING AMENDMENTS.**

12 (a) **AMENDMENTS TO TITLE 17, UNITED STATES**  
13 **CODE.**—

14 (1) Section 109 (b)(4) of title 17, United States  
15 Code, is amended by striking “505, and 509” and  
16 inserting “and 505”.

17 (2) Section 111 of title 17, United States Code,  
18 is amended—

19 (A) in subsection (b), by striking “and  
20 509”;

21 (B) in subsection (c)—

22 (i) in paragraph (2), by striking “and  
23 509”;

1 (ii) in paragraph (3), by striking “sec-  
2 tions 509 and 510” and inserting “section  
3 510”; and

4 (iii) in paragraph (4), by striking  
5 “and section 509”; and  
6 (C) in subsection (e)—

7 (i) in paragraph (1), by striking “sec-  
8 tions 509 and 510” and inserting “section  
9 510”; and

10 (ii) in paragraph (2), by striking “and  
11 509”.

12 (3) Section 115(e) of title 17, United States  
13 Code, is amended—

14 (A) in paragraph (3)(G)(i), by striking  
15 “and 509”; and

16 (B) in paragraph (6), by striking “and  
17 509”.

18 (4) Section 119(a) of title 17, United States  
19 Code, is amended—

20 (A) in paragraph (6), by striking “sections  
21 509 and 510” and inserting “section 510”;

22 (B) in paragraph (7)(A), by striking “and  
23 509”;

24 (C) in paragraph (8), by striking “and  
25 509”; and

1 (D) in paragraph (13), by striking “and  
2 509”.

3 (5) Section 122 of title 17, United States Code,  
4 is amended—

5 (A) in subsection (d), by striking “and  
6 509”;

7 (B) in subsection (e), by striking “sections  
8 509 and 510” and inserting “section 510”; and

9 (C) in subsection (f)(1), by striking “and  
10 509”.

11 (6) Section 411(b) of title 17, United States  
12 Code, is amended by striking “sections 509 and  
13 510” and inserting “section 510”.

14 (b) OTHER AMENDMENTS.—Section 596(c)(2)(c) of  
15 the Tariff Act of 1950 (19 U.S.C. 1595a(c)(2)(c)) is  
16 amended by striking “or 509”.